

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-215402.2

DATE: October 22, 1984

MATTER OF: Space Services International
Corporation

DIGEST:

1. Protest that RFP requirement for 100-percent performance bond discriminates against small business is denied since contracting officer has discretion to determine whether need exists for bonding requirement and record shows that bond was considered necessary due to the critical nature of services being provided and the large inventory of government equipment being furnished the contractor.
2. Where record shows that bonding requirement is reasonably imposed, requirement does not constitute a predetermination of contractor responsibility.

Space Services International Corporation (Space Services) protests the requirement for a 100-percent performance bond in request for proposals (RFP) No. N00189-84-R-0051, issued by the Naval Hospital, Portsmouth, Virginia, for food management services at the hospital.

Space Services complains that the performance bond requirement in the RFP discriminates against small business concerns and precluded it and other small business firms from competing. In addition, Space Services argues that the bond requirement constitutes an impermissible predetermination of responsibility.

We deny the protest.

Contracting officers have the discretion to determine whether a need exists under Federal Acquisition Regulation (FAR) § 28.103-2, 48 Fed. Reg. 42,288 (1983) (to be codified at 48 C.F.R. § 28.103-2), for a performance bond requirement in a particular procurement. Although a

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performance bond requirement may in some circumstances result in a restriction of competition, it is nevertheless a necessary and proper means of securing to the government fulfillment of a contractor's obligations under his contract. Triple "P" Services, Inc., B-204303, Dec. 1, 1981, 81-2 C.P.D. ¶ 436. Thus, when the decision to require bonds is found to be reasonable and made in good faith, we will not disturb the agency's determination. K.H. Services, B-212172, Sept. 15, 1983, 83-2 C.P.D. ¶ 329; Technical Services Corporation, B-195838, Dec. 18, 1979, 79-2 C.P.D. ¶ 415.

Here, the Navy contends that the performance bond was necessary due to the critical nature of the services being provided and the large inventory of government equipment being furnished the contractor for use in performing the contract. The Navy indicates that the successful offeror will be responsible for providing basic subsistence for both patients and hospital support personnel and that a failure or interruption in performance would be catastrophic. These determinations are consistent with FAR, § 28.103-2, 48 Fed. Reg. 42,171, regarding the justification for requiring a performance bond for nonconstruction services. In our view, the Navy has justified the imposition of the performance bond and, in these circumstances, the bonding requirement does not constitute a predetermination of responsibility. See Technical Services Corporation, B-195838, supra, 79-2 C.P.D. ¶ 415 at 3.

Finally, the record shows that the Navy received four proposals from small business concerns. Accordingly, despite Space Services' argument to the contrary, it does not appear that the performance bond requirement discriminated against small businesses.


Acting Comptroller General
of the United States